

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH WAYNE JONES,

Defendant and Appellant.

B236850

(Los Angeles County  
Super. Ct. No. BA292350)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Robert J. Perry, Judge. Affirmed.

Peter Gold, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant  
Attorney General, Lance E. Winters, Assistant Attorney General, James William  
Bilderback II and Tita Nguyen, Deputy Attorneys General, for Plaintiff and  
Respondent.

Joseph Wayne Jones appeals from the judgment entered following his conviction on one count of first degree murder (Pen. Code, 187, subd. (a)), four counts of attempted murder (Pen. Code, §§ 664/187, subd. (a)), and one count of shooting at an inhabited dwelling (Pen. Code, § 246).<sup>1</sup> Appellant raises three issues on appeal, none of which we find meritorious. We therefore affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **I. *Prosecution Evidence***

#### **A. *October 20, 2005, 84th Street Shooting at Turner Residence (Counts 3-6)***

Lester Turner and Andre Turner lived on 84th Street in Los Angeles with their grandfather, John Turner.<sup>2</sup> Lester and Andre were members of the Eight Trey Gangster Crips gang.

Around 5:15 p.m. on October 20, 2005, John was sitting inside the house in a room facing the street. Lester, Andre, and a friend, Kevin Ingram, were in the driveway outside the house working on Lester's car.

Three African American men in their early 20's and wearing hoodies drove a grey pickup truck down the street, got out of the truck, and started walking toward the Turner residence. Andre could not see their faces because of the hoodies, so he thought they were friends of his and said, "What's up?" They replied, "What's up?" and then started shooting at the house. One of the three used a rifle, and the other two used handguns.

---

<sup>1</sup> All further statutory references are to the Penal Code unless otherwise specified.

<sup>2</sup> For ease of reference, the family members will be referred to by their first names. John was deceased by the time of trial, but he testified at the preliminary hearing.

Andre ran into the house through the front door, Lester ran to the back of the house and jumped inside through a window, and Ingram ran away through the backyard. Numerous shots were fired, but no one was hit. After shooting, the men ran back to their truck and drove away.

On October 23, 2005, two detectives went to the Turner residence to interview Andre, who was nervous about being interviewed. As they passed through the living room to interview Andre in an adjacent room, one detective saw a young Black male in the living room motion to Andre not to say anything to the police. Andre identified Damien Watts in a six-pack photographic lineup as a Rollin' 60's gang member with the moniker "Chopper" whom he knew from jail, but he did not identify a shooter.

Later that evening, Officer Richard Mendoza and his partner went to the Turner residence and asked Andre about the shooting. Andre said that he knew "Chopper from 60's" shot at his house, but he told Officer Mendoza that he would not testify because he was not a snitch. At trial, Andre denied saying this.

Fred Johnson lived across the street from the Turners and witnessed the shooting. At a live lineup in December 2005 and subsequently at trial, Johnson identified Watts as the shooter with the rifle.

*B. October 20, 2005, South Halldale Avenue Shooting (Counts 1-2)*

About five minutes after the shooting at the Turner residence, a shooting occurred a little over a mile away at the home of Robin Sanders (Robin) on Halldale Avenue in Los Angeles. She was inside her home at the time, and her nephew Thomas Maleik Sanders (Sanders) was there to visit and do his laundry.

Sanders' friend, Paul Fry, had driven Sanders to Robin's house and was waiting in the car in the driveway. Fry was a member of the Bounty Hunter Bloods gang, but Sanders was not a gang member.

After Sanders finished his laundry, he and Fry got in the car with the windows rolled down. When Fry started the car, an African American male ran up to Fry's window and pointed a handgun at him. Fry heard two or three clicks, but the gun did not fire. The man ran away toward the street.

As Fry tried to back out of the driveway, he looked through the passenger window and saw a different man two houses down, wearing a hoodie and holding an AK-47 and shooting it numerous times.

Fry tried to drive away, but he was shot three times. His car spun out of control and ended up in someone's yard. A grey pickup truck stopped near Fry's car, and the occupants looked at Fry and Sanders before driving away. Sanders was shot numerous times on the right side of his body and died as a result of his wounds.

### *C. Appellant's Statements to Police*

Appellant was interviewed by the police on October 23, 2005. He identified Watts and Jason Weldon from six-pack photo lineups and said that Watts and Weldon had told him Watts fired an AK-47 at Eight Trey Gangster Crips and at the Turner residence. Appellant also said that Weldon had borrowed appellant's pickup truck and either drove the truck or rode as a passenger on October 20, 2005. He identified Anthony Padilla as either the driver or a passenger in the truck that day.

In a subsequent interview, appellant admitted being a passenger in the truck during both of the shootings. He said that on October 20, Weldon came to his

house and told him he needed to go with him because “one of the homies had got shot.” While they were talking, Derek Brown called appellant and said that someone had threatened his father. Appellant and Weldon picked up Brown and decided to pick up Watts and get an AK-47 rifle.

Brown, Weldon, and Watts told another gang member they were going to “put in work” by robbing someone and “shoot[ing] up something.” Appellant drove them to pick up Padilla, and Padilla then drove them to the Turner residence, where Watts, Weldon, and Brown shot at the house. Padilla had difficulty driving appellant’s truck, so appellant told him to pull over, and appellant started driving. After this shooting, appellant thought they were going to go home, so he told the others, “Go home. Let’s go, man,” but “they don’t want to listen.”

When they drove by the Sanders residence, appellant and Brown told the others that Sanders and Fry were not gang bangers, but Watts insisted on stopping and getting out of the truck. Appellant told the police, “I told them, I actually told them, that dude [Sanders] is innocent. I knew them dudes were no gang bangers.” During his interview, appellant asked if the police would have mercy on him and expressed fear that he would be killed because he was snitching. Appellant stated that he “never wanted to get part of none of this,” explaining that he had “been trying to leave this stuff alone.”

#### D. *Gang Evidence*

Detective David Ross testified about gang members’ use of monikers, how they join the gang, and the importance of territory to a gang. He also explained the concept of putting in work for the gang, stating that the best example of putting in work would be to shoot at rival gang members.

Detective Ross also testified about the Rollin' 60's Neighborhood Crips, a gang that he had monitored for four years while working for the gang unit. He knew that Watts was a member of the Rollin' 60's Neighborhood Crips with the moniker Chopper and that appellant also was a member, with the moniker Mr. Capo.

Officer Mendoza testified that snitching was not tolerated in gang culture and could result in the snitch being killed. He also explained the significance of territory to gangs and the reason gang members go into a rival's territory on a mission. He knew Watts and testified that Watts had told him he was a member of the Rollin' 60's Neighborhood Crips.

One of the Rollin' 60's gang's rivals was the Eight Trey Gangster Crips, and both of the October 20, 2005 shootings occurred in Eight Trey gang territory. Given a hypothetical based on the facts of these shootings, Detective Ross opined that the shootings were committed for the benefit of, at the direction of, or in association with, the Rollin' 60's gang to promote or further the gang's criminal conduct.

## II. *Defense Evidence*

The defense presented no evidence.

## III. *Procedural History*

Appellant was charged in a 12-count amended information with three counts of murder (counts 1, 8, 11), six counts of attempted premeditated murder (counts 2, 3, 4, 5, 9, 10), one count of shooting at an inhabited dwelling (count 6), and one

count of second degree robbery (count 12).<sup>3</sup> The information included allegations that the offenses were committed for the benefit of a criminal street gang, that appellant intentionally killed the victim while appellant was an active participant in a gang, and that a principal intentionally discharged a firearm, causing great bodily injury and death. (§§ 186.22, subd. (b)(1)(A), 190.2, subd. (a)(22), 12022.53, subds. (b)-(e).) The prosecution subsequently dismissed counts 8-10. During trial, the trial court granted appellant's motion to dismiss counts 11 and 12 for insufficient evidence pursuant to section 1118.1.

The jury found appellant guilty of all six remaining counts and found that the murder was in the first degree and the attempted murders were willful, deliberate and premeditated. The jury also found the firearm and gang allegations to be true. Appellant filed a motion for a new trial regarding the special circumstance allegation in count 1 that appellant intentionally killed Sanders while appellant was an active participant in a gang, pursuant to section 190.2, subdivision (a)(22). The court denied the motion.

The court sentenced appellant to a total term of life imprisonment without the possibility of parole plus four life terms and a consecutive term of 110 years to life, calculated as follows: count 1, life imprisonment without the possibility of parole, plus 25 years to life under section 12022.53; count 2, a consecutive term of life imprisonment with the possibility of parole, plus 25 years to life for the section 12022.53 allegation; count 3, a consecutive term of life imprisonment with the possibility of parole, plus 20 years to life under section 12022.53; count 4, a consecutive term of life imprisonment with the possibility of parole, plus 20 years to life for the section 12022.53 allegation; count 5, a consecutive term of life

---

<sup>3</sup> The information also charged Watts with counts 1-6 and 8-10, but additionally charged Watts alone in count 7 with possession of a firearm by a felon.

imprisonment with the possibility of parole, plus 20 years to life for the section 12022.53 allegation; count 6, the upper term of 7 years plus 5 years pursuant to section 186.22, to run concurrent with the other sentences. Appellant filed a timely notice of appeal.

## **DISCUSSION**

Appellant raises three issues. First, he contends that the trial court violated his right to an impartial jury when it limited the questioning of prospective jurors during voir dire. Second, he contends that the evidence is insufficient to support the allegation that he intentionally killed Sanders while an active participant in a gang. Third, appellant contends that the trial court erred in imposing a concurrent term for count 6, rather than staying the sentence pursuant to section 654.

### **I. *Voir Dire***

Appellant contends that the trial court's limitation on voir dire violated his constitutional right to an impartial jury. Prior to jury selection, the trial court informed counsel that the court would question the prospective jurors first and allow counsel 30 minutes each to question the first 35 prospective jurors. Defense counsel objected, arguing that this would not give enough time to discern who could be fair, especially given the emotional and gang-related nature of the crime. The court admonished defense counsel to "do your best," stating that it had never had a problem with a restriction on voir dire. The court also read aloud an excerpt from a case: "It is not the function of the examination of prospective jurors to educate the jury panel to the particular facts of the case, to compel the jurors to commit themselves to vote a particular way, to prejudice the jury for or against a



particular party, to argue the case, to indoctrinate the jury, or to instruct the jury on matters of law,” and admonished counsel to “abide by those limitations.”

The court questioned the first 3 prospective jurors regarding general issues and hardships and excused several for hardship. Defense counsel then questioned the prospective jurors as a group, following up with a few individual questions. After the prosecutor’s voir dire, both sides exercised peremptory challenges and selected the jury.

“‘The right to voir dire, like the right to peremptory challenge . . . , is not a constitutional right but a means to achieve the end of an impartial jury.’ [Citation.] . . . It is conducted . . . under the supervision of the trial court and its scope is necessarily left primarily to the sound discretion of that court. [Citation.]” (*People v. Banner* (1992) 3 Cal.App.4th 1315, 1324.)

Code of Civil Procedure section 223 governs voir dire in criminal cases and provides as follows: “In a criminal case, the court shall conduct an initial examination of prospective jurors. The court may submit to the prospective jurors additional questions requested by the parties as it deems proper. Upon completion of the court’s initial examination, counsel for each party shall have the right to examine, by oral and direct questioning, any or all of the prospective jurors. The court may, in the exercise of its discretion, limit the oral and direct questioning of prospective jurors by counsel. The court may specify the maximum amount of time that counsel for each party may question an individual juror, or may specify an aggregate amount of time for each party, which can then be allocated among the prospective jurors by counsel. Voir dire of any prospective jurors shall, where practicable, occur in the presence of the other jurors in all criminal cases, including death penalty cases.

“Examination of prospective jurors shall be conducted only in aid of the exercise of challenges for cause.

“The trial court’s exercise of its discretion in the manner in which voir dire is conducted, including any limitation on the time which will be allowed for direct questioning of prospective jurors by counsel and any determination that a question is not in aid of the exercise of challenges for cause, shall not cause any conviction to be reversed unless the exercise of that discretion has resulted in a miscarriage of justice, as specified in Section 13 of Article VI of the California Constitution.” (Code Civ. Proc., § 223.)

“‘The trial court . . . has a duty to restrict voir dire within reasonable bounds to expedite the trial. [Citation.]’ [Citation.] We review a trial court’s limitations on voir dire for abuse of discretion. [Citations.]” (*People v. Virgil* (2011) 51 Cal.4th 1210, 1246.)

The trial court abided by the requirements of Code of Civil Procedure section 223 by conducting an initial examination of the prospective jurors, which included questions regarding potential bias from past experiences with relevant issues such as crime, law enforcement, or gangs. Counsel for both sides then had the right to examine the prospective jurors, subject to the court’s 30-minute time limitation. Defense counsel asked questions of the prospective jurors, including specific questions of the only individual prospective juror who indicated an inclination to believe that gang members are not good people.

Appellant cites the “highly emotional and gang-related” nature of the charges to argue that more time was needed to discern which jurors could be fair. However, defense counsel did explore the bias that could arise from the gang-related nature of the offenses with the one prospective juror who expressed a concern about gangs, and the trial court followed up that discussion by

emphasizing that the burden was on the prosecution to prove the case and that the jurors needed to convict only if they were convinced by the evidence. The record indicates that the trial court did not abuse its discretion in imposing limitations on voir dire.

## II. *Sufficiency of the Evidence*

Appellant contends that the evidence is insufficient to support the finding that appellant intended to kill Sanders for purposes of the section 190.2, subdivision (a)(22) special circumstances allegation. Section 190.2, subdivision (a)(22) provides for a penalty of death or life without the possibility of parole for a defendant found guilty of first degree murder if “[t]he defendant intentionally killed the victim while the defendant was an active participant in a criminal street gang, as defined in subdivision (f) of Section 186.22, and the murder was carried out to further the activities of the criminal street gang.”

“On appeal, an appellate court deciding whether sufficient evidence supports a verdict must determine whether the record contains substantial evidence – which we repeatedly have described as evidence that is reasonable, credible, and of solid value – from which a reasonable jury could find the accused guilty beyond a reasonable doubt. [Citation.]” (*People v. Hovarter* (2008) 44 Cal.4th 983, 996-997, italics deleted.)

““In assessing the sufficiency of the evidence, we review the entire record in the light most favorable to the judgment to determine whether it discloses evidence that is reasonable, credible, and of solid value such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.]’ [Citation.] We resolve all conflicts in the evidence and questions of credibility in favor of the verdict, and indulge every reasonable inference the jury could draw

from the evidence. [Citation.] This standard applies whether direct or circumstantial evidence is involved. [Citation.] It also applies when determining whether the evidence is sufficient to sustain a jury finding on a gang enhancement. [Citations.] Reversal is unwarranted unless “upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].” [Citation.]” (*People v. Mendez* (2010) 188 Cal.App.4th 47, 56.)

Appellant contends that the jury’s special circumstance finding should be reversed because there was insufficient evidence that he acted with an intent to kill Sanders.<sup>4</sup> He relies on his statements during his police interviews that he tried to convince Watts and the others not to shoot Sanders and Fry because they were innocent and were not gang bangers.

The evidence is sufficient to support the jury’s finding on the special circumstance allegation. Appellant’s statements during his police interviews indicate that he helped prepare for the shootings by picking people up and helping to get the AK-47. He knew what was going to take place, and he drove his truck to the Sanders residence. Although he stated that he wanted to go home and did not want the others to shoot Sanders because he was “innocent,” appellant stopped the truck to let Watts out, waited while he fired, and then drove them away afterward. The jury was free to disbelieve his protestations of innocence. Viewing, as we must, the evidence in the light most favorable to the judgment, we conclude that there is sufficient evidence to support the jury’s special circumstance finding.

Appellant argues in the alternative that the trial court abused its discretion in denying his motion for a new trial. “We review a trial court’s ruling on a motion

---

<sup>4</sup> Appellant does not challenge the sufficiency of the evidence to support the findings that he was an active participant in the gang and that the murder was carried out to further the activities of a gang. (§ 190.2, subd. (a)(22).) The record indicates that there was substantial evidence to support both those findings.

for a new trial under a deferential abuse-of-discretion standard.’ [Citations.] “‘A trial court’s ruling on a motion for new trial is so completely within that court’s discretion that a reviewing court will not disturb the ruling absent a manifest and unmistakable abuse of that discretion.’” [Citations.]” (*People v. Thompson* (2010) 49 Cal.4th 79, 140.)

The trial court denied appellant’s new trial motion, finding that there was an intent to kill and that the evidence supported the jury’s finding. Again, there was sufficient evidence to support the jury’s finding. The trial court’s ruling was not an abuse of discretion.

### III. *Section 654*

Appellant contends that the trial court erred in imposing a concurrent term on count 6, shooting at an inhabited dwelling, rather than staying the sentence pursuant to section 654, because it was based on the same conduct as that charged in the attempted murder counts. Section 654 provides in relevant part that “[a]n act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision.” (§ 654, subd. (a).)

“‘[S]ection 654 applies not only where there was but one act in the ordinary sense, but also where there was a course of conduct which violated more than one statute but nevertheless constituted an indivisible transaction. . . . If all the offenses were *incident to one objective*, the defendant may be punished for any *one* of such offenses but not for more than one.’ [Citation.]” (*People v. Wynn* (2010) 184 Cal.App.4th 1210, 1214-1215.)

“On the other hand, section 654 does not apply when the evidence discloses that a defendant entertained multiple criminal objectives independent of each other. In that case, ‘the trial court may impose punishment for independent violations committed in pursuit of each objective even though the violations shared common acts or were parts of an otherwise indivisible course of conduct. [Citations.] The principal inquiry in each case is whether the defendant’s criminal intent and objective were single or multiple.’ [Citation.] ‘A defendant’s criminal objective is “determined from all the circumstances and is primarily a question of fact for the trial court, whose findings will be upheld on appeal if there is any substantial evidence to support it.” [Citation.]’ [Citation.]” (*In re Jose P.* (2003) 106 Cal.App.4th 458, 469.)

“There is a multiple victim exception to Penal Code section 654 which allows separate punishment for each crime of violence against a different victim, even though all crimes are part of an indivisible course of conduct with a single principal objective. [Citation.] An assailant’s greater culpability for intending or risking harm to more than one person precludes application of section 654. [Citation.]” (*People v. Felix* (2009) 172 Cal.App.4th 1618, 1630-1631 (*Felix*).)

Counts 3, 4, and 5 charged appellant with the attempted murders of Lester, Andre, and John Doe (presumably Ingram, whose identity was not determined at first) at the Turner residence, while count 6 charged him with shooting at the Turner residence. At the sentencing hearing, when the trial court imposed sentence on count 6, it expressed concern that “there are aspects of it that make the court think that possibly this is a 654 situation.” The court thus decided “to impose the high term of 7 years plus 5 years for the 186.22(b)(1) allegation,” and initially stated that it would stay imposition of that sentence, but then decided to make the sentence run concurrent to the other sentences.

Appellant contends that the attempted murders and the shooting at an inhabited dwelling were part of an indivisible course of conduct with a single objective for purposes of section 654. We need not determine whether these offenses were part of an indivisible course of conduct because the multiple victim exception to section 654 discussed in *Felix* is directly applicable.

“[W]here the crime of shooting at an inhabited residence is involved, a defendant need not be aware of the identity or number of people in the house to be punished separately for each victim.” (*Felix, supra*, 172 Cal.App.4th at p. 1631.) Here, Lester, Andre, and Ingram were outside the house at the time of the shooting, while the grandfather, John, was inside the house. John was not accounted for in the attempted murder charges and therefore was “victimized by the shooting into the dwelling but [was] not [a] named victim[] in any other count.” (*Ibid.*)

The multiple victim exception precludes application of section 654. The trial court accordingly did not err in declining to stay the sentence under section 654.

**DISPOSITION**

The judgment is affirmed.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

WILLHITE, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.